IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.859 OF 2006
IN
SUIT NO.2626 OF 2005

M/s. Metalurgical Services ...Plaintiff
Vs.
Surendra Kumar Pande ...Defendant
And
M/s. Lakozy ...Applicant

Mrs.Snehal Modi for Plaintiff
Ms. Geeta Shastri i/b. S.P.Srivastava for Defendant

CORAM: SMT. ROSHAN DALVI, J.
DATED: 15TH FEBRUARY, 2007

P.C.

1. The suit is filed for declaring the Defendant trespasser and for possession of the premises in his occupation. The Court Receiver has been appointed Receiver of the suit premises which is a Garage used as a residential premises instead. The user is clearly unauthorised. The Defendant, being in possession of the suit premises has been appointed Agent of the Court Receiver. The Defendant has to pay royalty to the Court Receiver. Adhoc royalty of Rs.4000/- p.m had been fixed. Upon the objection of the Defendant the

adhoc royalty of Rs.1600/- per month was directed to be paid. Thereafter by a detailed valuation of the valuer from the panel of the Valuers with the Court Receiver the valuation has been fixed. That valuation is Rs.9600/- p.m.

2. The Defendant has challenged both the orders, but essentially the final order based upon the valuer's report has to be considered. That is the order dated 5th September, 1996 fixing the valuation at Rs.9600/- .

3. The Defendant has relied upon his own independent Valuer's report which has valued the suit property at Rs.1300/- . That is not the Valuer on the panel of the Court Receiver. Such report cannot be considered. The Court is required to consider the valuation report of the Panel Valuer and determine whether the amount is so arbitrarily fixed has to be unconsciouable and cannot be taken to be the royalty amount payable by the Defendant or whether it is a reasoned valuation, as is usually done, in which case interference by the Court is not called for.

4. The report of the Valuer is dated 17th April, 2006. It shows the inspection carried out by one Mr. Sharma. The kind of the property or its area is not disputed. Hence, the measurement taken by the said Mr. Sharma upon

inspection can be accepted.

5. The report shows the suit property as a Garage. It is in prime residential locality of the island city of Mumbai. It has all civil amenities and public transport such as BEST buses, taxies etc in the vicinity. The plot is taken on lease from the BMC by the Plaintiff. The description of the building mentioned in the report is of no relevance. No instances of any sale of any isolated garage in the locality was available to the Valuer. The ready reckoner issued by the Stamp Office of the Government showing the market value of the flats in 2006 was referred to. It has been shown to Court also. The property is on City Survey No.1522. The property is a shop/commercial premises. It is illegally used for residential purpose by the Defendant. The valuation of the property cannot be dependent upon unauthorised use by the Defendant. It has to be valued for the purpose for which it is meant to be used since that is value obtainable on the sale of the premises. The valuation shown in the ready reckoner is Rs.1,92,000/- per sq. mtr. The suit garage is 19.48 sq. mtrs in area. Hence, the market value of the garage for the purpose of sale would be Rs.37,40,160/- .

6. The Valuer has been more reasonable. He has valued the suit garage at Rs.95,000/- per sq. mtr instead. That is

even lesser than the residential rate mentioned in the ready reckoner itself which is shown to be Rs.1,27,500/- per sq. mtr. He has further given a rebate as a suit premises has no toilet facilities. Since no rates are recommended for garage premises in the ready reckoner, he has considered the rates of parking spaces under stilts. Further he has given depreciation for the age of construction.

7. There is a wooden loft of 72 sq. ft = 7.11 sq. mtrs in the suit premises. The loft is to valued at half the rate of the premises. He has taken 50% of the area of the loft for calculation of the total area. Accordingly the measurement of the loft is taken to be only 3.55 sq. mtrs. The consolidated area of the garage and the loft is therefore, 23.03 sq. mtrs. Consequently the shop/commercial premises rate of Rs.1,92,000/- for a total area of 23.03 sq. mtrs would be Rs.44,44,790/- .

8. He has further considered the return on investment at the modest rate of 8% per annum and thus determined the valuation on the total valuation of Rs.14,40,000/- .

9. The entire report is well reasoned and in fact more considerate than required. The property has been valued at far less than its valuation in the ready reckoner. All

legitimate rebates and depreciations have been granted.

10. It must be remembered that the Defendant is stated to be a trespasser. He claims tenancy rights. The suit is essentially for his eviction. The Defendant is the Court Receiver's Agent. He has to pay compensation for continuing to reside in the suit premises pending the suit. The suit premises is admittedly a garage and defendants user is completely unauthorised.

11. It is only because of Courts' delays that the Defendant can avail of the facility of continuing to reside in the premises. The report by the Valuer therefore, has not to be so meticulously judged as to find loopholes therein. The valuation by the Court Receiver is not for the sale of the property. It would not determine the title of the parties finally. If the Defendant desires to continue residing in the suit premises in which Court Receiver is appointed he has to pay reasonable compensation for it. Otherwise the entire purpose of the appointment of Court Receiver would be frustrated.

12. Both the valuations - adhoc or otherwise - have been challenged by the Defendant. The Defendant's Advocate contended that the valuation in the ready reckoner cannot

be accepted. She relied upon the judgment in U.P.Jal Nigam, Lucknow through its Chairman Vs. M/s. Kalra Properties (P) Ltd. Luknow, AIR 1996 SC 1170 for considering the valuation of acquisition of land under the Land Acquisition Act. The reliance upon this judgment is misconceived. It is held that the valuation of the property for the purpose of acquisition is with regard to transfer of title and hence, a basic valuation in the register maintained by the Collector for collecting stamp duty shown by way of circulars was held not correct for determining the final value of the property acquired.

13. Reliance upon the case of M.B.Gopala Krishna Vs. Special Deputy Collector, Land Acquisition, (1996) 3 Supreme Court Cases 594 is also under the Land Acquisition Act holding that land burdened with encumbrances takes lesser price than the freehold land. In this case no encumbrances are shown though the land is leasehold.

14. The Defendant has contended that the representative of the Court Receiver Mr. Sharma who inspected the property and took measurements demanded a bribe and for nonpayment of the bribe the price was hiked. The report of the Valuer shows otherwise.

15. The valuation is correctly done. It is improper for the Court to interfere with such valuation. The Chamber Summons totally lacks bonafides. The Chamber Summons is dismissed. The Defendant shall pay royalty at the rate of Rs.9600/- as per the valuation report from the date as fixed by the Court Receiver.

16. The Defendant shall execute the Royalty Agreement as called upon by the Court Receiver.

17. The Defendant shall also deposit the usual 3 month royalty in advance as called upon by the Court Receiver.

(SMT.ROSHAN DALVI, J.)